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CONFIDENTIAL

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6 FEB 1950

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The Honorable Lindsay C. Warren
Comptroller General
General Accounting Office
Washington 25, D. C.

Dear Mr. Warren:

Enclosed herewith is a request from the [redacted] for relief from the assessment of liquidated damages under Contract [redacted] with this Agency. The [redacted] Company was the only bidder after advertisement by circular letter and public notice on a contract executed 4 May 1949. The contract provides for the delivery of 100 transformer replacement units for radio transmitters. Two preliminary models were to be constructed and submitted to the Government within 60 days from the date notice of award was placed in the mail, and delivery of the remaining 98 units was to be made within 60 days from date of formal acceptance of the preliminary models. ARTICLE 6 of the contract contains a "Delays-Liquidated Damages" clause which provides that "the contractor shall not be charged with liquidated damages or any excess cost when the delay in delivery is due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to acts of God or the public enemy, acts of the Government, fires, flood, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor due to such causes unless the contracting officer shall determine that the materials or supplies to be furnished under the subcontract are procurable in the open market."

Notice of award of the contract was made on 12 May 1949 and 2 prototype models were received on 24 June. One of these units was found to be unsatisfactory and was returned to the contractor for correction. Time for delivery expired on 12 July. On 13 July, the contractor was notified of the assessment of liquidated damages on the one undelivered unit. On 3 August, the contractor was notified of the acceptance of both prototype models and requested to proceed with production of the balance of 98 units.

By letter dated 3 November, the contractor notified the Agency that the delivery date of 2 October for the remaining 98 models had been exceeded because a component part obtained from a subcontractor had proved unsatisfactory and the units had to be refabricated after the part was replaced. Contractor then requested waiver of the provisions of ARTICLE 6 in regard to liquidated damages. He was advised by letter of 16 November that the Agency could not legally waive the requirement of liquidated damages. Delivery of the additional units was completed on 18 November.

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deficiency in the product of the subcontractor. The fact that the subcontractor was the only source of supply - while not a cognizable reason for a legal escape - is another factor that commands attention from an equitable viewpoint. Although the damages assessed conform to the contract requirements, I do not - as a matter of fact - believe that full assessment is fair and just when all aspects of the case are reviewed. For these reasons I am forwarding the contractor's request with a recommendation that you remit to the contractor under the authority of Section 3 (a) of the Central Intelligence Agency Act of 1949 (P.L. 110 - 81st Cong.) which incorporates by reference the authority contained in the Armed Services Procurement Act of 1947, Title 41 USCA, Section 155, so much of the liquidated damages as are not in excess of 10% of the contract price.

In view of the classification of the contract as "restricted", since there is a security element present in procurement of this type for the Agency, it would be appreciated if your opinion and comments could be confined to the Agency and not published.

Sincerely yours,

S. V. R. E. 7/6/50

R. H. Hillenkoetter
Rear Admiral, USN
Director of Central Intelligence

CWPrice:hw

cc: Subject
Chrono
Signer's copy ✓
Central Records
Return to CGC dated

Typed Jan. 31, 1950

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Attachments:

1. Ltr to CIA fr
2. Ltr to UTC fr
3. Ltr to CIA fr
4. Ltr to UTC fr
5. Ltr to CIA fr
6. Ltr to UTC fr
7. Ltr to UTC fr
8. Ltr to UTC fr
9. Statement and
10. Contract for Supplies dtd May 4, 1949

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MEMORANDUM TO: Director of Central Intelligence
THROUGH : Executive, CIA
FROM : Assistant Director, OSI

11 January 1950

SUBJECT : Request for approval to pay travel of prospective employee when called in for interview

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1. Through another Office, the name of [redacted]
[redacted] Michigan has come to the attention of this office.

3. As Professor of Organic Chemistry, [redacted]

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4. [redacted] training, experience as a chemist, teacher and administrator make him particularly well qualified for a Branch Chief position in the Chemistry Division.

5. The scarcity of professional personnel having this combination of experience necessitates that he be interviewed at the earliest possible opportunity.

6. It is requested, therefore, that approval be granted to bring [redacted] to Washington for interview at the expense of CIA.

/s/

WILLARD MACHIE

APPROVED 23 JAN 1950

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R. H. HILENKOTTER
Rear Admiral, USN
Director of Central Intelligence

Orig - Chief, Finance Div. SSS
cc - Chief, Pers Div. (thru Pers Director)
cc - AD/OSI
cc - DGI
cc - Exec

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